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PARLIAMENTARY CONTROL IN THE FORMATION OF A DEMOCRATIC STATE OF UKRAINE

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SUMMARY

The article is devoted to the analysis of the implementation of parliamentary control in Ukraine, its role in the formation of a democratic state. Mentioned the areas of the realisation of control activities. The focus of study is placed on the modern state of parliamentary control. It is emphasized that the control function is due to the constitutional and legal nature of the legislature as a representative body of the whole people. Parliamentary control is extremely valuable in the period of the instability of the political system and the lack of a stable practice of democratic governance.

Key words: parliament, legislature, parliamentary control, areas of parliamentary control.

ПАРЛАМЕНТСКИЙ КОНТРОЛЬ В СТАНОВЛЕНИИ ДЕМОКРАТИЧЕСКОГО ГОСУДАРСТВА УКРАИНЫ

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АННОТАЦИЯ

Статья посвящена анализу осуществления парламентского контроля в Украине, его роли в формировании демократического государства. Упомянуты направления реализации контрольной деятельности. Основное внимание в исследовании уделяется современному состоянию парламентского контроля. Подчеркивается, что контрольная функция обусловлена конституционно-правовой природой законодательного органа как представительного органа всего народа. Парламентский контроль чрезвычайно ценен в период нестабильности политической системы и отсутствия стабильной практики демократического управления.

Ключевые слова: парламент, законодательный орган, парламентский контроль, сферы осуществления парламентского контроля.

Formulation of the problem. An integral part of the profound transformations in the areas of state construction, social policy, the work of political and ideological institutions is the rethinking and improvement of legal mechanisms for accelerating social and economic development, and consistent strengthening of the legal foundations of state and public life. The combination of science and practice is a precept of time, because the functioning of the political system poses many problems that require theoretical elaboration and the fastest application of the latest scientific advances. The decision of the painful problems of the present stage of the formation of the post-Soviet state constitutional system is, to a certain extent, facilitated by the activity of the legislative body.

The functioning of the parliament as a state institution that ensures the development of legislation, formation of state institutions and exercise of control, primarily in the executive branch, on the basis of national interests in resolving political disputes, minimizes the existing legislative gaps and shortcomings of law enforcement practice. It is parliamentary control that guarantees the reality of the constitutional system's foundations and the legitimacy of the constitutional processes, fixed in the Basic Law, in the conditions of the discrepant/ often warring policy of high state bodies formed by ideologically opposing parties.

Effectiveness of the implementation of the legislature control activities' results depends on how the issues, put forward by the practice, are promptly solved in direct contact between officials of various state institutions, civil society institutions,

using national legislation and the generalized experience of democratic countries.

Paying tribute to the theoretical and practical importance of parliamentary control, it is necessary to recognize problems that have not become a subject of legal analysis yet and it is considered fragmentary without taking into account today's reality, which are determinants in political process. Further ensure of national security of the state is not possible without reforming of state apparatus, which is characterized by a certain number of negative factors.

The purpose and task of the article is determination of a role of parliamentary control process in democratic state-building, supporting democracy and its principles. Everyone sees the need for sound democratic political activity about economic and social issues. The parliament is able to use effective normative measures not being a political technology tool purely to achieve party interests. Reforming of the Verkhovna Rada of Ukraine in the context of Euro-Atlantic integration, cooperation with other countries of the world, increases standards of its legal socializations according to the criteria of Western Europe and the USA [1, p. 131–132].

This paper will also examine the areas of parliamentary control, regulated in the Ukrainian legislature. The focus of study will be placed on the modern state of parliamentary control.

1. Parliamentary control as a type of state control

The control function of the Parliament is determined by the constitutional and legal nature of the legislature as a

representative body of all people. It objectively follows from the very right of the Ukrainian people as the primary source of power to oversee the activities of state bodies through which power is implemented [2, p. 29]. According to Ukrainian scholars, this representative character is indirect in nature, since the Verkhovna Rada of Ukraine does not directly own a representative mandate, but acquires such a character due to the presence of mandates of people's deputies.

However, the powers of deputies do not amount to the competence of the parliament. The exercise of competence by the parliament is a collective exercise by the people's deputies of their powers [3, p. 4–6].

Obviously, parliamentarians can exercise their rights and responsibilities not only collectively, but individually (the right of legislative initiative, the right to a deputy's request, etc.), including outside direct parliamentary activity (for example, the right to a deputy's appeal). However, we believe that such constitutional and legal status of people's deputies does not diminish the representative status of the Verkhovna Rada of Ukraine, since their powers are valid only with the existence of a competent legislative body [4, p. 17; 5, p. 34–35].

At the same time, it should be emphasized that the exercise by the parliament of the control function is closely linked to the implementation of the rule of law established in the Constitution, which is believed to be justified and has natural human rights as the main source [2, p. 29].

These fundamental principles of the work of the Verkhovna Rada of Ukraine «permeate» the theoretical and practical aspects of the control activity.

The exercise of parliamentary control is a manifestation of a system of checks and balances; certain activity of the supreme representative body of the state in relation to the state control over the implementation of the adopted laws [6, c. 34]. Directly in the Constitution of Ukraine, among issues that fall under the competence of the Verkhovna Rada of Ukraine, there is no such power as “exercising control over the implementation of laws and other resolutions adopted by the Parliament”. This is a generic concept that covers all areas (directions) of the legislative power provided for by the Basic Law. The proposed definition allows “not overburdening” the interpretation of the list of forms and object-subjective composition of the parliamentary control.

The Basic Law (Point 33 of Part I Article 85) stresses that the control function of the parliament should be implemented within the limits defined by the Constitution of Ukraine. The analysis of legislation provides grounds for arguing that the main areas of parliamentary control are the direction of the control activities of the Verkhovna Rada of Ukraine, which are determined by the social purpose of this body and correspond to the main areas of public activities [7, p. 8; 8, p. 174].

Parliamentary control is extremely valuable in the period of the instability of the political system and the lack of a stable practice of democratic governance. The so-called pluralistic (multi-party) political systems, in which the most important political decisions are taken democratically in the process of nominating, debating and adopting political programs that have received the greatest support from state institutions and voters, are, to some extent, weak, especially in the stage of formation. Democratic political systems are characterized by the coexistence of different, often opposing ideologies, in which party struggles can be transposed to the national and general social level, which leads to the breakdown of state power, destabilization of social relations, increase of the level of conflict of political life and, finally, neglect of a number of legal norms [9, p. 101].

As the domestic scholars rightly observed, Ukraine was “blown away” by the dominance of one-party system, rushed to the other extreme – “boundless political pluralism” [10, p.

12], which immediately led to extremely sharp conflicts in the political system (it is enough to mention the long years of confrontation between the executive power and the legislature, which not only slowed down the pace of society's reform, but caused a significant blow to the legal, economic, and political balance of the society).

In addition to the general negative tendency of political parties to shift the emphasis from the problems of representing the public interest to the struggle for political power, the development of a multiparty system in Ukraine is conditioned by the influence of a number of other factors, which, on the one hand, are inherent in all transition countries, and, on the other hand, they are inherited in Ukraine from the former USSR. This effect is explained by the fact that after the monopoly, totalitarian rule of the CPSU, when even the idea of the emergence and existence along with it other political parties were considered to be greatly seduced, the development of a multiparty system acquired an avalanche in Ukraine, which resulted not only in the absence of a clear party ideology, but also in the explicit distortion of a number of classical principles of party political activity [11, p. 389–391] (transparent selection of personnel in party lists, social integration, etc.).

It is necessary to pay attention to the fact that the recent Ukrainian crisis, the lack of effective parliamentary control – a manifestation of real parliamentarism as its sound indication and a desire to establish pro-European democratic state and legal institutions, can hardly be understood outside the historical context. Many issues shaping the current antagonism have a long history dating back to the Soviet past or the first decade of the Ukrainian independence. In this context, because Ukraine is a geopolitical pivot in the Eurasian grand chess game and has great strategic values, the research on a role of parliamentary control process in activity of state apparatus and implement of constitutionalism demands a closer look.

Our country has always been a special case due to its geographical position, tight economic relations, high intensity and wide spectrum of EU-Ukraine relations, including technical and industrial cooperation, visa-free regime dialogue, trade relations, as well as special EU initiatives, such as European Neighbourhood Policy and the Eastern Partnership. Thus, the existence of democratic measures of parliamentary control, which can ensure the reality of the pro-European course of state development are vitally necessary for Ukraine's conditionality with the European Union. In this regard, it is also important to note that European Parliament is authorized to pave the way for a real practical guaranteeing human rights, democratic society because has rather wide competencies on conflict management issues in the framework of Common Foreign and Security Policy [12, p. 178; 13, p. 15; 14, p. 111–112].

The effective parliamentary control is a considerable contribution to the civil society formation, which is another point to mention like a linkage between human rights articulations and constitutional state. For a long time the Soviet system did not outroot its existence, with absence of civil rights, suppression of people's initiative, total KGB control over all spheres of life and paternalism being the safest and most beneficial pattern for the people's behaviour. From this perspective, the time between the Ukrainian declaration of independence and the “Orange revolution” – i.e. 1991–2004 – marks a separate period in the Ukrainian history as it was the “Orange revolution” that altered the old Soviet paradigm in terms of the role that the civil society and people's initiative played. Discussing the results of the further political reforms (the transition to a parliamentary-presidential republic, implementation procedures of lustration of the authorities, which are only certain steps towards democratization of society and its reformatting in the civil) [15, p. 94–100; 16, p. 61], notify that they, unfortunately, did not removed the violation of

legislation by state and political institutions from the agenda. Furthermore, the extent to which EU conditionality contributed to the formation of the civil society, the weakness of the political system institutions in confronting external threats and an important role of supreme representative body's control for this process are informative for studying [14, p. 111–112].

The activity of the parliament develops under conditions of the crisis of former state and legal values. We are essentially in a crisis of values, which is the root cause of the crisis of states and supranational government. Therefore, new global conflicts that have appeared in recent years have not yet been resolved. The states that are in conflict with values cannot find optimal solutions and cannot implement them.

Values are born from big shocks – state and public ones, global shocks. Values are born as a response to these shocks, as a certain system of relations that allows you to achieve the removal of the threat, to achieve a situation where the repetition of the threat will never be possible.

In many ways, the roots of today's events are that the common value system after World War II did not affect one of the countries that won the Second World War – the Union of Soviet Socialist Republics and those states that were in its zone of influence. That is, the new value system did not become a common one for all participants in the war.

Paradoxically, the state that initiated this war, bearing the bulk of responsibility, was in the bosom of these new values, and the Soviet Union and many other related states that won the war did not turn out to be.

When in the late eighties and early nineties of the twentieth century new values came to the USSR, the illusion arose that these values would become universal and huge value wave in the territory of the USSR and Eastern Europe would be transformed, opening up new opportunities, creating space for new solutions.

Everyone wanted changes in the Soviet Union – and no one was ready for these changes: neither within the Soviet Union, as our political practice showed, nor outside the Soviet Union, including in Europe [17].

2. Subjects and areas of parliamentary control

Parliamentary control is carried out without any authorizations within the limits of the competence of the legislature. The subjects of realization are directly the parliament, its internal structural divisions and deputies, other state institutions, functionally combined with the parliament [18, p. 323]. The purpose of the supervisory activity is to control the state of implementation of the adopted laws, which covers all the directions of the controlling influence provided for by the Constitution, regardless of the peculiarities of the forms and object-subjective constituents of its implementation.

Parliamentary control is differentiated depending on the time spent on the: previous one (performs the preventive function before the decision or the beginning of the activity of the controlled object – for example, the approval of the Government's declaration on general policy); current (implemented in the process of overseeing the operation of the controlled object – for example, the work of the Accounting Chamber to verify the expenditure of the state budget by state bodies); the following (is a check of the actual implementation of the law – approval of the report on the implementation of the Government's declaration on general policy).

We believe that among the constitutionally defined, priority areas, one should allocate control over the functioning of the executive power, the activities of officials, including senior officials of the state (the President and the Prosecutor General of Ukraine), observance of the constitutional rights and freedoms, the state of financial and economic systems.

Parliamentary control *over the activities of the executive power* is carried out at: the approval of national programs of

economic, scientific and technical, social, national and cultural development, environmental protection (Point 6 of Part 1 Article 85 of the Constitution of Ukraine); Appointment of the Prime Minister of Ukraine, Minister of Defense of Ukraine, Secretary for Foreign Affairs of Ukraine on the proposal of the President; appointment of other members of the Cabinet of Ministers of Ukraine, Head of the Antimonopoly Committee of Ukraine, Chairman of the State Committee for Television and Radio Broadcasting of Ukraine, Chairman of the State Property Fund of Ukraine on the proposal of the Prime Minister of Ukraine, the dismissal of the abovementioned persons; the decision on the resignation of the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine (Points 12, 13 of Part 1 Article 85 of the Constitution of Ukraine); appointment and dismissal of the leadership of central executive bodies, such as the President of the National Bank of Ukraine, on the proposal of the President of Ukraine and half of the composition of the Council of the National Bank of Ukraine, the National Council of Ukraine on Television and Radio Broadcasting (Points 18-20 of Part 1 Article 85 of the Constitution of Ukraine), etc.

Parliamentary control *over the activities of officials*, including senior officials of the state, who are elected (appointed, approved) and released by the Verkhovna Rada of Ukraine (Points 16-21 of Part 1 Article 85 of the Constitution of Ukraine) or for the appointment and dismissal of which its consent is required (Point 25 of Part 1 Article 85 of the Constitution of Ukraine), carried out in the forms: performance of nominating functions, declaring confidence to the Prosecutor General, discussion of reports and information of officials, declaring consent to their release. That is, appointing managers and forming a personal structure of state authorities, the legislature de-facto inspects their further functioning.

Parliamentary control *over the activities of the President* is carried out when listening to annual and extraordinary messages on the internal and external situation of Ukraine, sending a request of a people's deputy, group of people's deputies or a committee of the Verkhovna Rada of Ukraine, previously supported by at least a third of the overall number, the removal of the Head of State from office in the order of a special procedure (impeachment), regulated by Article 111 of the Constitution are held (Points 8, 10, 34 of Part 1 Article 85 of the Constitution of Ukraine).

Parliamentary control *over the observance of constitutional rights and freedoms* the legislative institution implements directly, including through committees, temporary investigative and special commissions, individual people's deputies, which respond to received appeals or exercise personal control by sending deputy requests. Another form of such control is the functioning of the institution of the Ombudsman and other state bodies whose formation the parliament is involved in (for example, appoints a third of the Constitutional Court of Ukraine, etc.) (Points 17, 26 of Part 1 Article 85, Articles 86, 89, 101 of the Constitution of Ukraine).

Parliamentary control *over financial and economic activity of the state* is carried out: at all stages of the budget process (Point 4 of Part 1 Article 85, Article 97 of the Constitution of Ukraine); when approving the list of objects of state property right, which are not subject to privatization, and recognizing the legal principles of seizure of private property objects (Point 36 of Part 1 Article 85 of the Constitution of Ukraine); when making decisions on granting Ukraine loans and economic assistance to foreign states and international organizations, as well as obtaining loans from foreign states, banks and international financial organizations not provided by the State Budget of Ukraine, control over their use (Point 14 of Part 1 Article 85 of the Constitution of Ukraine). Significant powers in the sphere of exercising parliamentary control belong to the Accounting Chamber acting on the basis of the special Law

(Point 16 of Part 1 Article 85, Article 98 of the Constitution of Ukraine).

The exclusive nature of the budget powers of the Verkhovna Rada is determined by the political and functional nature of the mandate of representation. However, the implementation of an unconditional monopoly requires the corresponding actions of other bodies of state, primarily executive. In particular, by providing the state budget with the legal force of the law, the parliament authorizes the Cabinet of Ministers to ensure income and expenditures [19, p. 206-207; 5, p. 194-196].

3. Executive-legislative relations: challenges for Ukraine

The mechanism of interaction between legislative and executive authorities is indicative for determining the strength of parliamentary control.

Executive-legislative relations encompass the possible modes of interaction between parliament and government. In the literature it is stressed that the parliament and the government should not be seen as two independent entities, but as two overlapping bodies [20, p. 1, 11-36; 21, p. 152-178].

The modes of interactions between the parliament and the government depend on the power divisions within and between these state bodies. Basically, there are three modes of interactions:

- the government dominates the parliament;
- the parliament dominates the government;
- the parliament and the government are balanced.

Scientists note some basic variables that constitute these legislative-executive relationships:

– the role of the vote of investiture (variable INVESTIT). When this is constitutionally required, it imposes a barrier on the executive when there is no majority in the parliament [22, p. 115–151];

– the vote of confidence (variable CONFIDEN). This procedure can be used by both parliaments and governments in order to achieve their goals [23, p. 269–282];

– the role of the Head of State (variable HOSGOV), especially the formal powers in relation to the parliament and the government [24].

A correlational analysis shows that INVESTIT is strongly related to particular environments. Vote of investiture is often found in countries with an absolute majority, newly established presidential systems, formerly collapsed systems, and systems with a low government duration and in non-Commonwealth systems. From this it follows that the vote of investiture is adapted in many former communist systems. The vote of confidence, on the other hand, is more common and therefore less confined to new democracies.

It is interesting to note, that most post-communist democracies did not only enhance the power of the Parliament but also the power of the Head of State over the parliament and the government [25, p. 5–6]. Ukraine was no exception.

Today, after the 2019 presidential and parliamentary elections, it becomes apparent that the new Head of State wants to concentrate all power on representatives of one political force – his own. Zelensky's party received a strong majority in the Verkhovna Rada, even without uniting with other political forces. It is a chance to independently appoint the prime minister and the speaker, as well as form the government. Consequently, there is a threat of usurpation of power. Especially if we consider that the party "Servant of the people" and the president are going to hold the local elections in the autumn. The success in the majority constituencies encourages them to do so. They can get the vast majority even in local councils.

On the other hand, such a concentration of power has a certain advantage, especially in crisis conditions. We are talking about the ability to quickly make the necessary decisions. The stability of political leadership enables Zelensky's team to fulfill its promises, including unpopular reforms. The new

political elite has 226 votes to adjust any laws, and whether there will be 300 votes for possible changes to the Constitution will show the time.

For the first time in the history of independent Ukraine, a one-party parliamentary majority has emerged. And there can be challenges for both – the country as a whole and this political force, which has a huge responsibility. Any hardships will now be associated with the "Servant of the people", this is a kind of boomerang [26].

In addition, the Verkhovna Rada of the 9th convocation will be upgraded by more than 80%. 342 deputies came to the Verkhovna Rada for the first time and only 82 deputies were already parliamentarians in the last convocation. This happened thanks to the parties "Voice" and "Servant of the people", who offered lists without any ex-MP [27]. Inexperienced people's deputies will have to learn the basics of deputy activity. This is also a peculiar challenge.

Conclusions. The first decades of the Ukrainian independence were important in terms of parliamentary control establishment. The systematic execution of such an important function by the legislature has contributed to the fact that the quality of controlling process is improving and the overwhelming majority of the adopted decisions contributes to the elimination of deficiencies in legislation and law enforcement practice. Timely response to the problems of constitutional construction. The timely response to the constitutional construction problems also improves the state of legal consciousness and the legal culture of citizens.

The cooperation within the state apparatus is an important channel of the permanent dialogue, which strengthens the Parliament's position as a real representative body.

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